CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 283

BALTIMORE NATIONAL BANK, PETITIONER,

vs.

STATE TAX COMMISSION OF MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED JULY 26, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

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[fol. 3]

IN CIRCUIT COURT OF BALTIMORE CITY

BALTIMORE NATIONAL BANK

vs.

STATE TAX COMMISSION OF MARYLAND

PETITION AND APPEAL—Filed 21st December, 1934

To the Honorable the Judge of said Court:

1. Baltimore National Bank, a national bank duly incorporated and existing under the laws of the United States, by Semmes, Bowen & Semmes, Edwin F. A. Morgan and Gaylord Lee Clark, its attorneys, presents this its petition and appeal from the action of the State Tax Commission of Maryland in assessing for the purposes of taxation by the State of Maryland and the Mayor and City Council of Baltimore City, 10,000 shares of the preferred stock of the par value of $100.00 each of Baltimore National Bank, aggregating $1,000,000.

2. Your petitioner shows that on or about March 14, 1934, it filed with the State Tax Commission of Maryland its report as of January 1, 1934, on Form 52-1934-1600, showing, among other things, that it was incorporated on August 4, 1933, at Washington, D. C., and conducts a general banking business in the City of Baltimore, State of Maryland, and that as of January 1, 1934, it had authorized, issued and outstanding 50,000 shares of its common stock of the par value of $10.00 each, and 10,000 shares of its Five Per Cent Cumulative Preferred stock of the par value of $100.00 each, and that as to said preferred stock said report filed as aforesaid contained the following, namely:

"Note A—The bank has authorized, issued and outstanding 10,000 shares of the par value of $100.00 each, aggregating $1,000,000, of its Five Per Cent Cumulative Preferred Stock, all of which said preferred stock is owned by, and registered in, the name of the Reconstruction Fi-

nance Corporation, an agency of the United States Govern-
[fol. 4] ment, and is accordingly not taxable hereunder and is therefore not returned herein."

3. That your petitioner received from State Tax Commission of Maryland a notice dated September 28, 1934, stating that the State Tax Commission had made a tentative assessment on the aforesaid 10,000 shares of preferred stock of your petitioner at $100.00 per share, aggregating as to said preferred stock $1,000,000 and that said tentative assessment would become final and conclusive unless sufficient reasons for a change therein should be presented to the Commission within fifteen days from the aforesaid September 28, 1934, and that no change would be made in said assessment if it had become final by reason of the lapse of the aforesaid fifteen day period without protest.

4. That on October 4, 1934, your petitioner, by its attorneys, addressed a letter to the State Tax Commission of Maryland as follows, namely:

"We wish to enter a formal protest to the assessment made on the shares of stock of the Baltimore National Bank, Baltimore and Light Streets, particularly as to the preferred stock of 10,000 shares at $100.00 per share, or $1,000,000, for the reason that the said preferred stock is not taxable under the Maryland law, being wholly owned by the Reconstruction Finance Corporation, an agency of the United States Government and for other reasons to be set forth at the hearing. We would appreciate it if you would formally enter this protest and confirm this letter."

5. That on October 5, 1934, Albert W. Ward, Esq., Secretary of State Tax Commission, wrote your petitioner's attorneys as follows, namely:

"The Commission is in receipt of your letter of October fourth, protesting the 1934 assessment placed against the shares of the Baltimore National Bank and requesting an opportunity to present your objections.

"Just as soon as a convenient date for the hearing can be arranged, you will be duly notified."

6. That on or about the 27th day of November, 1934, a hearing was arranged for and held before the State Tax

[fol. 5] Commission, at which hearing your petitioner, through its counsel, presented its objections with the reasons therefore to the tentative assessment of its 10,000 shares of preferred stock.

7. That thereafter, your petitioner received from Albert W. Ward, Esq., Secretary of the State Tax Commission, a communication dated December 17, 1934, and reading as follows, namely:

"This is to notify you that, after due consideration of the protest made by you in the matter of the assessment for 1934 of the shares of the Baltimore National Bank, the State Tax Commission has overruled the same and has entered the following assessment thereon for 1934:

10,000 shares preferred stock at $100	$1,000,000
50,000 shares common stock at $10	500,000
Total assessment	$1,500,000."

8. That as of January 1, 1934, Reconstruction Finance Corporation was, and as of the date hereof, is the owner of the entire authorized, issued and outstanding 10,000 shares of the Five Per cent Cumulative Preferred Stock of the par value of $100.00 each, aggregating $1,000,000 of your petitioner and that Reconstruction Finance Corporation was as of January 1, 1934, and is, as of the date hereof, the registered owner of each and every share of said preferred stock; having at the time of the formation of your petitioner subscribed for said 10,000 shares of preferred stock and paid from its capital and surplus the sum of $1,000,000 therefor.

9. That by Act of Congress of January 22, 1932, Chapter 8, Section 1, 47 Stat. 5, known as Reconstruction Finance Corporation Act, there was created a body corporate with the name "Reconstruction Finance Corporation."

Said Reconstruction Finance Corporation Act, as from time to time amended thereafter, provided, among other things, that the said Reconstruction Finance Corporation should have a capital stock of $500,000,000, subscribed to by the United States of America, payment for which should be subject to call in whole or in part by the Board of Directors of said Reconstruction Finance Corporation.

[fol. 6] 10. Your petitioner is informed, believes and therefore avers that pursuant to said Reconstruction Finance Corporation Act the United States of America was as of January 1, 1934, and now is the sole stockholder of the entire issued and outstanding stock of said Reconstruction Finance Corporation.

11. That the assessment on the aforesaid 10,000 shares of preferred stock of Baltimore National Bank is void and in violation of the laws and Constitution of the State of Maryland and of the laws and Constitution of the United States.

12. That the Reconstruction Finance Corporation is an agency of the United States of America, and its property and assets of every kind, character and description are immune from taxation by State authority.

Wherefore your petitioner is aggrieved by the final action taken by the State Tax Commission of Maryland in the exercise of its original jurisdiction in assessing said 10,000 shares of its preferred stock and in computing any tax upon the same, and takes this appeal therefrom to this Honorable Court, as provided by Section 186 (b) of Article 81 of the 1929 Supplement of the Annotated Code of Maryland, and prays this Honorable Court to review and correct the aforesaid assessment on the 10,000 shares of the preferred stock of your petitioner by declaring said assessment upon said preferred stock illegal and striking the same from the tax rolls, and that the State Tax Commission be required to produce the record of its proceedings in the premises in this Court in order that this Court may examine and review the same.

And as in duty bound, etc.

Baltimore National Bank, by E. L. Miles, Vice President. Semmes, Bowen & Semmes, Edwin F. A. Morgan, Gaylord Lee Clark, Solicitors for Petitioner.

[fol. 7] IN CIRCUIT COURT OF BALTIMORE CITY

ORDER TO SHOW CAUSE—Filed Dec. 21, 1934

Ordered this 21st day of December, 1934, upon the aforegoing petition that the Clerk issue a writ of subpoena duces tecum directed to the State Tax Commission, requiring it to

produce in Court at the hearing of this appeal the entire record of the proceedings of said Commission in regard to the assessment appealed from, including all books, papers, letters and other documents pertaining to said assessment; and also that the Clerk issue a writ of summons to the Honorable, Jesse D. Price, Oscar Leser and A. LeRoy McCardell, directing them to appear in this Court and show cause, if any they have, why the relief prayed in said petition and appeal should not be granted.

Joseph N. Ulman, Judge.

Secretary's certificate to attached transcript omitted in printing.

[fol. 8] BEFORE STATE TAX COMMISSION

1934

Banks, Trust, Insurance and Other Financial Corporations

Date of notification of assessment	Received in Office of State Tax Commission
Sept. 28th, 1934	March 14th, 1934

Penalty for failure to file report on or before March 15, is $5. Thereafter additional penalty of $1 for each 10 days or fraction thereof during which such default shall continue and a further penalty of $10 if such default shall have continued beyond June 3.

State Tax Commission of Maryland

Union Trust Building

Baltimore

Report as of January 1, 1934, of (Name of Corporation)
Baltimore National Bank

Mailing address, Baltimore and Light Streets, Maryland.

1. Date of incorporation: August 4, 1933. Place of incorporation: Washington, D. C.

2. Nature of business conducted: General Banking.

3. Where is the office, if any, in this State from which the business is actually directed and managed? Baltimore and Light Street, Baltimore, Md.

(a) Where is the place in this State where the principal business of the corporation is transacted? Baltimore, Md.

(b) Does the corporation transact any part of its business in Maryland? All.

[fol. 9] 4. Names and addresses of officers:

	Names	Addresses
President:	—— ——	——
Secretary:	—— ——	——
Treasurer:	—— ——	——

5. Directors:

Names	Names
—— ——	—— ——
—— ——	—— ——

6. Capitalization:

	Par Per Share	No. of Shares	Amount	No. of Shares	Amount
Common Stock	$10.00	50,000	$500,000	50,000	$500,000
Preferred Stock—See Note "A".					
Other Classes	.....	.....	.....	.....	.....
Totals	$10.00	50,000	$500,000	50,000	$500,000

7. Dividends paid in:

Dates	Per Cent	Amounts per Shares
1932		None
1933		None

8. Gross earnings for year ending January 1, 1934: $151,561,92.

9. Net profits (before deducting dividends) for the year ending January 1, 1934: $33,597.56. See Note "B".

[fol. 10] 9a. In determining net profits, give Sales of Securities: $3,983.29.

(a) Amount charged off for losses: Miscellaneous, $118.51—$4,101.80.

(b) Amount charged off for depreciation of securities or other assets: $6,904.56.

(c) Amount added for appreciation of securities or other assets: None.

(d) Amount of profit from sale of securities or other assests: $17,227.02.

(e) Amount added for losses recovered after being charged off: None.

10. Amount on January 1, 1934—Capital, common, $500,000; surplus, $400,000; undivided profits, 50,000 not earned, $83,597.56; reserve or contingent funds, 50,000 not earned, $56,904.56.

11. Sales of stock during year—Highest price per share, lowest price per share: None sold except original issue. See Note "C".

Number of shares transferred on the books during the year 1933: 3,814—See Note "C".

Present price of common stock: No market. See Note "B". Estimate of value of common stock on Jan. 1, 1934: Par value, $10,00 per share. See Note "D".

How arrived at?

12. Amount of deposits of all kinds, January 1, 1934, $12,921,040.81.

13. Amount of savings deposits, January 1, 1934, $736,-270.98.

13a. Total resources, January 1, 1934, $15,506,105.84.

14. Insert here (or on separate sheet to be filed with this report) (1) Statement of Assets and Liabilities as of January 1, 1934; (2) Income and Expenditures Account covering the year 1933. Statement attached.

[fol. 11] 15. Assessed value for 1934 of real estate owned by and assessed to the corporation in Maryland. Attach certificate for the same from the Appeal Tax Court of Baltimore City or from the County Commissioners of the respective counties where such real estate is located, none (aggregate).

16. Baltimore City Stock, returned under Code, Art. 81, Sec. 17, owned by the corporation at the time of making

this report and which was owned by the corporation on January 1, 1934, and for six months continuously theretofore; and for which the certificate of the City Register of Baltimore is filed herewith, showing total par value of: None.

17. Shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sec. 15(b), owned by the corporation at the time of making this report and which were owned by it on January 1, 1934, and for six months continuously theretofore.—

No. of Shares Name of Corp.	Leave this col. blank	No. of Shares Name of Corp.	Leave this col. blank
None	.....	.....	.....

18. If said corporation has returned any shares of banks or other corporations under No. 17, state whether the same are owned by the corporation or are held by the corporation as security for any loan or as collateral security for any payment or other purpose, or as trustee; or in any other fiduciary capacity.

19. (For fire or life insurance companies only). Amount of mortgages secured by real estate in Maryland, owned by the corporation on January 1, 1934. Attach list showing the totals, separately, for Baltimore City and for each County: $ —— (Aggregate).

Date, March 14th, 1934.

E. L. Miles, Vice President and Cashier. (Corporate Seal.)

[fol. 12] Affidavit

STATE OF MARYLAND,
Baltimore, to wit:

On this 14th day of March, 1934, before me, the subscriber, a Notary Public of the State of Maryland, in and for the said City or County, personally appeared E. L. Miles, the VP. & Cashier of the within named corporation, and made oath in due form of law, that the statements contained in this report are true and correct in every particular; and that the list of stockholders filed with the State Tax Commission on behalf of the corporation, for use in connec-

tion with this report, correctly sets forth as of January 1, 1934, the names of all the stockholders of the corporation and the places where they respectively reside.

As witness my hand and official seal.

William T. Reed, Notary Public. (Notarial Seal.)

BEFORE STATE TAX COMMISSION

12/15/34—After protest and hearing thereon, the Commission orders assessment for 1934 to be entered as follows:

10,000 shs. pfd. at 100=1,000,000 O.L.
50,000 shs. common at 10=500,000 JDP.

Assessment

10,000 shrs. Pfd. at $100	1,000,000
50,000 shrs. Com. at $10	500,000
	1,500,000

Credits—Real estate, $——; tax-paying shares, $——; mortgages, $——.

Net assessment (County and Town purposes)—

10,000 pfd. at 100	$1,000,000
50,000 com. at 10	500,000
	$1,500,000

[fol. 13] Assessed value of Baltimore City Stock, $——.

Net assessment (Baltimore City purposes, after City Stock credit), shares at ——, $——.

Penalty for failure to file report by March 15, 1934, $——.

Assessment entered.

9/19/34.

(Signed) A. LeRoy McCardell, (Signed) Jesse D. Price, Commissioners.

Distribution

Common—

	Shares	Assessment
Baltimore City	35,331	353,310
Baltimore City, New Annex	.....	.....

Distribution—Continued

County—		
Allegany	12	120
Anne Arundel	24	240
Baltimore	722	7,220
Harford	36	360
Howard	13,875	138,750
Preferred—		
Balto. City	10,000	1,000,000
Total	50,000	1,500,000

Assessment subject to State Tax, $——.
State Tax $3,300.
Dec. 17, 1934.
HHB.

Incorporated Towns

Town	Shares	Assessment
.....	.....	.....

[fol. 14] BEFORE STATE TAX COMMISSION

Baltimore National Bank

Condensed Statement at Close of Business, December 30, 1933

Assets

Cash and due from Federal Reserve and other banks	$4,152,973.03
United States Government Securities	9,409,244.78
	$13,562,217.81
Federal Land Bank & Baltimore City Securities	506,626.66
Federal Reserve Bank Stock	57,000.00
Loans and Discounts	1,214,582.46
Customers Liability—Acceptances and Letters of Credit	50,894.33
5% Redemption Fund	25,000.00
Accrued Interests Receivable	93,844.31
Other Assets	18,239.20
Total	$15,528,404.77

Liabilities

Capital	$1,500,000.00
Surplus, Undivided Profits and Reserves	500,000.00
	$2,000,000.00
Profits and loss	33,597.56
Circulation	500,000.00
Interest Collected but not Earned	5,682.40
Acceptances and Letters of Credit	50,894.33
Reserves for Interest, Taxes, etc.	17,189.67
Deposits	12,921,040.81
Total	$15,528,404.77

[fol. 15]

Note A

The bank has authorized, issued and outstanding 10,000 shares of the par value of $100 each, aggregating $1,000,000, of its 5% Cumulative Preferred Stock, all of which said preferred stock is owned by, and registered in, the name of the Reconstruction Finance Corporation, an agency of the United States Government, and is accordingly not taxable hereunder and is therefore not returned herein.

Note B

Out of the profits of $33,597.56 allowance should be made for preferred dividends accrued to January 1st, 1934, on the 5% Cumulative Preferred Stock, aggregating $20,026.88.

Note C

So far as can be ascertained no stock was sold prior to January 1st, 1934, with the exception of the original issue, and transfer subsequent to such original issue have been either from the original syndicate or into names of a nominee.

Note D

There was no market for the shares of common stock, for the reason that all of such stock, exclusive of the Directors qualifying shares, was deposited in escrow pursuant to the terms of an agreement giving optional rights to

purchase all of said deposited common stock at the purchase price thereof, viz: $20 per share plus 6% interest thereon, calculated from the date of the consummation of the Plan of Reorganization of The Baltimore Trust Company to the date of the exercise of said option, the last of said options expiring on August 31st, 1934.

The estimated value of the common stock as of January 1st, 1934, is taken at its par value of $10 a share, for the reason that this stock is all optioned as set forth in the next preceding paragraph, and therefore has, and will continue to have until the expiration of the option period, little or no market.

[fol. 16] State of Maryland

State Tax Commission

Baltimore, Md.

May 18, 1934.

Hon. William Preston Lane, Jr., Attorney General of Maryland, Baltimore Trust Building, Baltimore, Maryland.

DEAR SIR:

The Commission has before it the matter of assessing the shares of the Baltimore National Bank for the year 1934.

The bank reports that as of January 1, 1934, it had issued and outstanding 10,000 shares of the par value of $100 each, aggregating $1,000,000 of its 5% cumulative preferred stock, all of which said preferred stock is owned by and registered in the name of the Reconstruction Finance Corporation, an agency of the United States Government and is accordingly not taxable, under Article 81, Section 15, of the Maryland Code.

Does the issuance of the banks preferred stock to the Reconstruction Finance Corporation preclude this Commission from assessing the said stock in accordance with the provisions of Article 81, Section 15 of the Maryland Code?

Yours very truly, (Signed) Albert W. Ward, Secretary.

BEFORE STATE TAX COMMISSION

OPINION OF ATTORNEY GENERAL

June 2, 1934.

To State Tax Commission, Union Trust Building, Baltimore, Md.

I received your letter of May 18th, and have carefully considered the question you raise as to whether your Com-
[fol. 17] mission may properly assess certain shares of preferred stock issued by the Baltimore National Bank to the Federal Reconstruction Finance Corporation.

Section 15(e) of Article 81 of the Maryland Code provides:

"Shares of stock assessable under this section shall be taxed to the several owners thereof, and the taxes thereon shall be debts of such owners, but may be collected in each case from the bank or other corporation, which shall be bound to pay the same from account of its stockholders whether or not dividends are declared thereon, as if such corporations were the ultimate taxpayer, but may obtain reimbursement therefor from the respective stockholders, and may charge the same in reduction of any amounts due to the several shareholders as dividends or otherwise."

Section 7 of Sub-section 22 of Article 81 provides:

Any property exempted from taxation by this State by the Constitution of the United States or by any Act of Congress passed pursuant to and in conformity with the Constitution of the United States"

shall be exempted from assessment.

Even in the absence of this section, the State could not tax property exempted by the Federal Constitution, nor could it tax property of the United States without express Congressional assent.

The Reconstruction Finance Corporation subscribed to the shares of preferred stock held by its pursuant to authority conferred by the Federal statute (Title 12, Section 51D, U. S. C. A.). This section does not confer any right of exemption. The Reconstruction Finance Corporation was created by the Act of January 22nd, 1932 (Title 15, Section 601, et seq., U. S. C. A.), and its entire capital

stock was subscribed by the United States. It is clear that the Reconstruction Finance Corporation is a Federal agency, and in no sense a private corporation.

Section 610 of the Act of January 22nd, 1932, provides that all notes, debentures, bonds or other obligations is- [fol. 18] sued by the corporation shall be tax exempt, and further, that "the corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation * * * except that any real property of the corporation shall be subject to State, territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed."

The National Bank Act, as amended by the Act of March 25, 1926 (Title 12, Section 548, U. S. C. A.), provides:

"The Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within its limits. The several States may * * * tax said shares * * * provided the following conditions are complied with. * * * The shares of any national banking association owned by non-residents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such non-resident shareholders. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any sub-division thereof, to the same extent, according to its value, as other real property is taxed."

The latter section has been construed by the Supreme Court to permit the taxation of shares of a national bank held by a private corporation, although it has been held that such a tax would be unconstitutional, but for the express assent given by the terms of the statute. Union Bank and Trust Company vs. Phelps, 288 U. S. 181.

It has been held that no State may tax the franchise or operation of a national bank. McCullock vs. Maryland, 4 Wheat. 316, nor may any State tax the capital, surplus, or other property of a national bank. Des Moines National Bank vs. Fairweather, 263 U. S. 103, 106.

Nevertheless, the Supreme Court has held that shares of stock in a national bank are taxable, even when they [fol. 19] are held by another national bank, which as the

owner thereof, and as a Federal agency, would otherwise clearly be entitled to tax exemption. National Bank of Redemption vs. Boston, 125 U. S. 60; Bank of California vs. Richardson, 248 U. S. 476; Bank of California vs. Roberts, 248 U. S. 497.

In the case first cited, referring to Section 548, the Court said:

"It is contended that no tax is thereby authorized upon the national bank itself as a corporation, nor upon the personal property of any such, and that, therefore, these shares in the National Bank of Redemption are exempt from taxation by virtue of their ownership. This, however, is not a reasonable interpretation of the language of the section. The manifest intention of the law is to permit the State in which a national bank is located to tax, subject to the limitations prescribed, *all the shares of its capital stock without regard to their ownership.* The proper inference is that the law permits, in the particular instance, the taxation of the national banks owning shares of the capital stock of another national bank by reason of that ownership, on the same footing with all other shares."

Similarly, it has been held that shares of stock in a Federal Reserve Bank, held by a national bank, are taxable. Cincinnati First Nat. Bank vs. Beaman, 257 F. 729.

I think the Federal statutes cited above must be constructed in pari materia. The Act creating the Reconstruction Finance Corporation exempts from taxation the corporation, its franchise, it- capital reserves and surplus and its income, but permits it to be taxed upon its real estate. The terms of this exemption follow closely the terms of the exemption granted to national banks, and yet, the property exemption enjoyed by a national bank does not extend to shares of national bank stock held by it. A broad power to tax national bank shares is conferred by Section 548 of Title 12, and I do not understand that this power is limited or qualified by the provisions of Section 610 of Title 15.

[fol. 20] I am aware of the line of decisions prohibiting taxation of corporations created solely for a governmental purpose under the war power, as for example: Clallam County vs. U. S., 263 U. S. 341; New Brunswick vs. U. S., 276 U. S. 546, but these decisions are hardly in point.

Assuming for the purposes of this opinion that the Reconstruction Finance Corporation is a Federal agency, exercising a proper governmental function in a national emergency, and having no private stockholders, I am nevertheless of the opinion that the shares of preferred stock in a national bank held by it, are subject to taxation by the State, by virtue of the Congressional consent implicit in Section 548 of the National Bank Act.

Yours very truly, (Signed) Wm. L. Henderson, Assistant Attorney General.

WLH:HF.

June 14, 1934.

Banks, Trust, Insurance and
Other Financial Corporations

State Tax Commission of Maryland
504 Union Trust Building, Baltimore, Md.

Sept. 28, 1934.

To the Baltimore National Bank, Baltimore & Light Streets.

This is to notify you that the following tentative assessment has been made on the shares of the above corporation for the current year, and that the same will become final and conclusive unless sufficient reasons for a change therein shall be presented to the Commission within fifteen (15) days from the date of this notice.

No change will be made in this assessment if it has become final by reason of the lapse of the fifteen day period without protest.

State Tax Commission of Maryland, Albert W. Ward, Secretary, per H. H. S.

[fol. 21] Aggregate valuation—

Preferred 10,000 shares at $100 per share	$1,000,000.00
Common 50,000 shares at $10 per share	500,000.00
	$1,500,000.00

$——.

Credits—Real Estate, $——; Tax-paying investments, $——.

Preferred 10,000 shares at $100 per share	$1,000,000.00
Common, 50,000 shares at $10 per share	500,000.00
Assessed value Baltimore City Stock	$1,500,000.00

—— shares at $—— per share; $——.

Net assessment per share taxable for County and/or Town purposes; $——.

Net assessment per share taxable for Baltimore City purposes; $——.

BEFORE STATE TAX COMMISSION OF MARYLAND

PROTEST

In the Matter of the Protest of Baltimore National Bank.

To the State Tax Commission of Maryland:

Baltimore National Bank, a national bank, duly incorporated and existing under the laws of the United States, by Semmes, Bowen & Semmes, its attorneys, protest against the tentative assessment made on the shares of preferred stock of your petitioner and shows unto this Honorable Commission the following:

1. That on or about March 14, 1934, your petitioner filed with this Honorable Commission its report as of January 1, 1934, on Form 52-1934-1600, showing, among other things, that it was incorporated on August 4, 1933, at Washington, D. C., and conducts a general banking business, and [fol. 22] that as of January 1, 1934, it had authorized, issued and outstanding 50,000 shares of its common stock of the par value of $10.00 each and 10,000 shares of its Five Per Cent Cumulative Preferred Stock of the par value of $100.00 each, and as to said preferred stock said report filed as aforesaid contained the following, namely:

"Note A—The bank has authorized, issued and outstanding 10,000 shares of the par value of $100.00 each, aggregating $1,000,000, of its Five Per Cent Cumulative Preferred Stock, all of which said preferred stock is owned by, and registered in, the name of the Reconstruction Finance Corporation, an agency of the United States Government, and is accordingly not taxable hereunder and is therefore not returned herein."

2. That your petitioner received from State Tax Commission of Maryland a notice dated September 28, 1934, stating that the State Tax Commission had made a tentative assessment on the aforesaid 10,000 shares of preferred stock of your petitioner at $100.00 per share, aggregating as to said preferred stock $1,000,000 and that said tentative assessment would become final and conclusive unless sufficient reasons for a change therein should be presented to the Commission within fifteen days from the aforesaid September 28, 1934, and that no change would be made in said assessment if it had become final by reason of the lapse of the aforesaid fifteen day period without protest.

3. That on October 4, 1934, your petitioner, by its attorneys, addressed a letter to the State Tax Commission of Maryland as follows, namely:

"We wish to enter a formal protest to the assessment made on the shares of stock of the Baltimore National Bank, Baltimore and Light Streets, particularly as to the preferred stock of 10,000 shares at $100.00 per share, or $1,000,000 for the reason that the said preferred stock is not taxable under the Maryland law, being wholly owned by the Reconstruction Finance Corporation, an agency of the United States Government and for other reasons to be set forth at the hearing. We would appreciate it if you would formally enter this protest and confirm this letter."

[fol. 23] 4. That on October 5, 1934, Albert W. Ward, Esq., Secretary of State Tax Commission, wrote your petitioner's attorneys as follows, namely:

"The Commission is in receipt of your letter of October fourth, protesting the 1934 assessment placed against the shares of the Baltimore National Bank and requesting an opportunity to present your objections.

"Just as soon as a convenient date for the hearing can be arranged, you will be duly notified."

5. That as of January 1, 1934, Reconstruction Finance Corporation was, and as of the date hereof, is the owner of the entire authorized, issued and outstanding 10,000 shares of the Five Per Cent Cumulative Preferred Stock of the par value of $100.00 each, aggregating $1,000,000, of your petitioner and that Reconstruction Finance Cor-

poration was as of January 1, 1934, and is, as of the date hereof, the registered owner of each and every share of said preferred stock; having at the time of the formation of your petitioner subscribed for said 10,000 shares of preferred stock and paid from its capital and surplus the sum of $1,000,000 therefor.

6. That by Act of Congress of January 22, 1932, Chapter 8, Section 1, 47 Stat. 5, known as Reconstruction Finance Corporation Act, there was created a body corporate with the name "Reconstruction Finance Corporation".

Said Reconstruction Finance Corporation Act, as from time to time amended thereafter, provided, among other things, that the said Reconstruction Finance Corporation should have a capital stock of $500,000,000, subscribed to by the United States of America, payment for which should be subject to call in whole or in part by the Board of Directors of said Reconstruction Finance Corporation.

7. Your petitioner is informed, believes and therefore avers that pursuant to said Reconstruction Finance Corporation Act the United States of America was as of January 1, 1934, and now is the sole stockholder of the entire issued and outstanding stock of said Reconstruction Finance Corporation.

[fol. 24] 8. That the assessment on the aforesaid 10,000 shares of preferred stock of your petitioner is void and in violation of the laws and Constitution of the State of Maryland and the laws and Constitution of the United States for the following reasons, namely:

(a) In that it violates sub-section (22) of section 7 of Article 81 of the Maryland Code of General Laws, which reads as follows:

"7. The following shall be exempt from assessment and from State, county and city taxation in this State, each and all of which exemptions shall be strictly construed.

"* * * (22) Any property exempted from taxation by this State by the Constitution of the United States or by any Act of Congress passed to and in conformity with the Constitution of the United States."

(b) In that Section 10 of the Reconstruction Finance Corporation Act specifically provides, among other things, that "the corporation, * * * , its capital, reserves, and

surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, * * * or by any State, county, municipality or local taxing authority; except that any real property of the corporation shall be subject to State, * * *, county, municipal or local taxation to the same extent, according to its value, as other real property is taxed.

(c) In that the shares of stock of a national bank cannot be taxed under State authority, except with the consent of Congress and then only in conformity with the restrictions attached to its consent, and the Act of March 4, 1923, Chapter 267 (12 U. S. C. A., Section 548) which permits taxation of shares of stock of national banks by State authority does not provide for the taxation of such shares when owned by the United States of America.

(d) In that property of the United States, in this case the aforesaid shares of preferred stock of the petitioner owned by the Reconstruction Finance Corporation, is immune from taxation under the Constitution of the United States. It is true no specific words forbid such taxation, still the prohibition established by McCulloh v. Maryland, [fol. 25] 4 Wheat. 316, was established on the ground that the power to tax assumed by the State was in its nature "repugnant to the constitutional laws of the Union" and therefore was one that under the Constitution the State could not use.

9. That the Reconstruction Finance Corporation is an agency of the United States of America and its property and assets of every kind, character and description are immune from taxation by State authority for the reason that—

(a) Section 10 of the Act of Congress specifically exempted such property above referred to.

(b) 3 Opinions of Attorney General of Maryland 77, Honorable Albert C. Ritchie, Attorney General, held on February 5, 1918, that the Food Administration Corporation, a Delaware corporation, whose entire capital stock was owned by the United States and whose business was conducted solely for Governmental account and purposes under an Act of Congress, was not subject to the Maryland foreign corporation tax.

(c) 3 Opinions of Attorney General of Maryland 82, Honorable Ogle Marbury, Acting Attorney General, held on August 26, 1918, that United States Housing Corporation, a New York corporation, all of whose stock was held by the Secretary of Labor for the benefit of the United States, with the exception of two shares which were held for qualification purposes, was not subject to taxation by the State of Maryland.

(d) Clallam County v. United States and United States Spruce Corporation, 263 U. S. 341. In this case Mr. Justice Holmes held that the Spruce Corporation was an agency of the United States and that its property was therefore not taxable by the State.

10. The shares of stock of a national bank may be taxed to the owners thereof pursuant to the provisions of Chapter 267 of the Act of March 4, 1923, above referred to, and such shares may be taxed even where the owner thereof is another national bank. See National Bank of Redemption v. Boston, 125 U. S. 60. However, that case is to be distinguished from the present case for while the other [fol. 26] national bank in the National Bank of Redemption case was a Federal agency, yet the shares of such other national bank were owned by private parties and not by the United States of America as is the case with the Reconstruction Finance Corporation. Furthermore, the capital and surplus of the other national bank in the National Bank of Redemption case had been contributed by private individuals, whereas in the case of the Reconstruction Finance Corporation its entire capital and surplus has been contributed by the United States of America, and still further, any profits which the other national bank in the National Bank of Redemption case might earn would eventually accrue to the benefit and use of its stockholders who were private individuals, whereas in the case of the Reconstruction Finance Corporation such profits or losses as it may from time to time sustain will run only to the benefit of or be borne by the United States of America. It is therefore respectfully submitted that the dictum of Mr. Justice Matthews in the National Bank of Redemption case, in which he said that the manifest intention of the law was to permit the State in which a national bank was located to tax, subject to the limitations prescribed, "all

of the shares of its capital stock without regard to their ownership", does not and did not contemplate the United States of America as the owner of shares of stock of a national bank.

Wherefore, your petitioner prays that the assessment on the preferred stock be struck out and the assessment against your petitioner corrected accordingly.

Semmes, Bowen & Semmes, Edwin F. A. Morgan, per (Sgd.) Gaylord Lee Clark, Attorneys for Baltimore National Bank.

[fol. 27]

State of Maryland
State Tax Commission
Baltimore, Md.

December 17, 1934.

Messrs. Semmes, Bowen & Semmes, Attorneys for Baltimore National Bank, Baltimore Trust Building, Baltimore, Md.

GENTLEMEN:

This is to notify you that, after due consideration of the protest made by you in the matter of the assessment for 1934 of the shares of the Baltimore National Bank, the State Tax Commission has overruled the same and has entered the following assessment thereon for 1934:

10,000 shares preferred stock at $100	$1,000,000
50,000 shares common stock at $10	500,000
Total assessment	$1,500,000

By order of the State Tax Commission.
(Signed) Albert W. Ward, Secretary.

[fol. 28] IN CIRCUIT COURT OF BALTIMORE CITY

STIPULATION AS TO FACTS—Filed Jan. 19, 1935

It is hereby stipulated and agreed by and between counsel for the parties hereto that the matters and facts set

out in the petition and appeal of the Baltimore National Bank, as filed herein, are admitted to be a true statement of the facts involved in this case. Conclusions of law arising therefrom are not admitted by the respondent.

Semmes, Bowen & Semmes, Edwin F. A. Morgan, Gaylord Lee Clark, Counsel for Petitioner, Baltimore National Bank. Herbert R. O'Conor, Atty. Gen.; Wm. L. Henderson, Asst. Atty. Gen., Counsel for Respondent, State Tax Commission of Maryland.

IN CIRCUIT COURT OF BALTIMORE CITY

MEMORANDUM OF OPINION—Filed Jan. 22, 1935

At the hearing herein the provisions of Section 5219 of the Revised Statutes of the United States (Title 12, U. S. C. A., Section 548), and the provisions of the Reconstruction Finance Corporation Act as amended (Title 15, U. S. C. A., Section 601, and in particular 610 thereof), and the provisions of Article I, Section 7 (22), of the Annotated Code of Maryland, 1929 Supplement, were cited to the Court and relied upon. There was also cited McCullough v. Maryland, 4 Wheaton 316. The action of the Court is predicated upon its understanding of these authorities, and [fol. 29] it is the intention of the Court to make clear by this memorandum that the Court is passing upon a Federal question.

In spite of the language used by the Supreme Court in the case of National Bank of Redemption versus Boston, 125 U. S. 60, viz: "All the shares of its capital stock" (being the shares of the capital stock of a national bank) are taxable "without regard to their ownership", the Court is of the opinion that in the instant case the shares of preferred stock of Baltimore National Bank owned by Reconstruction Finance Corporation are exempt from taxation by the State of Maryland or the Mayor and City Council of Baltimore City. The ground of the distinction relied upon by the Court is that Reconstruction Finance Corporation is not merely an agency of the Federal Government in the sense that every national bank is such an agency, but said Reconstruction Finance Corporation is

par excellence and a fortiori a governmental agency or perhaps might be designated as an emergency department or arm of the Federal Government. An appropriate order will be signed.

Joseph N. Ulman, J.

IN CIRCUIT COURT OF BALTIMORE CITY

JUDGMENT—Filed Jan. 22, 1935

In conformity with an opinion filed this day in the above entitled cause, it is, this 22nd day of January, 1935,

Ordered, adjudged and decreed by the Circuit Court of Baltimore City, that the assessment made by the State Tax Commission of Maryland on the ten thousand (10,000) shares of the Preferred Stock of Baltimore National Bank is erroneous and illegal, in that the same is in violation of and contrary to Section 5219 of the Revised Statutes of the United States (Title 12, U. S. C. A., Sec. 548) and the Reconstruction Finance Corporation Act, Title 15, U. S. C. A., Sec. 601, and in particular Section 610 thereof, and is [fol. 30] repugnant to the Constitution of the United States, and is in violation of and contrary to Article 81, Section 7 (22), of the Annotated Code of Maryland, 1929 Supplement, and accordingly the above entitled case be and it hereby is remanded to the State Tax Commission of Maryland with directions to cancel said assessment and to otherwise conform with said opinion and this order.

Joseph N. Ulman, Judge.

IN CIRCUIT COURT OF BALTIMORE CITY

ORDER FOR APPEAL—Filed Jan. 29, 1935

MR. CLERK:

Please issue an appeal from the order of Court passed on January 22nd, 1935, in the above entitled cause, to the Court of Appeals of Maryland.

Herbert R. O'Conor, Attorney General; Wm. L. Henderson, Asst. Attorney General, Solicitors for State Tax Commission of Maryland.

Which said appeal being by the Court here also granted, it is thereupon ordered by the Court here, that a transcript of the record of proceedings in the cause aforesaid be transmitted to the Court of Appeals of Maryland, under the rules thereof, and the same is transmitted accordingly.

Test: Chas. R. Whiteford, Clerk.

[fol. 31] In testimony that the aforegoing is truly taken from the record and proceedings of the Circuit Court of Baltimore City, in the therein entitled cause, I hereunto set my hand and affix the seal of the Circuit Court of Baltimore City aforesaid, this 29th day of March, A. D. 1935.

Chas R. Whiteford, Clerk of the Circuit Court of Baltimore City. (Seal.)

[fol. 32] IN COURT OF APPEALS OF MARYLAND

April Term, 1935

No. 39

STATE TAX COMMISSION OF MARYLAND

vs.

BALTIMORE NATIONAL BANK

OPINION—Filed June 18, 1935

Chief Judge BOND delivered the opinion of the Court:

The Baltimore National Bank appealed to the court below from a ruling of the State Tax Commission denying immunity from taxation for the bank's preferred stock owned by the Reconstruction Finance Corporation, and upholding an assessment of it for state and municipal taxation for the year 1934. The court below reversed the ruling, and the Commission now appeals to this court. Code, Art. 81, Sec. 186 (b).

In pursuance of a plan of reorganization by stockholders of the Baltimore Trust Company, which was not able to resume business after the bank holidays of February 24 to March 4, 1933, and is in course of liquidation, the Baltimore National Bank was incorporated on August 4, 1933,

to transact the banking business with the aid of the subscription by the Reconstruction Finance Corporation to an issue of preferred stock. Act of Congress January 22, 1932; 47 Stat. 5; U. S. C. A., Tit. 15, Secs. 601, etc. The issue was of ten thousand shares of five per cent cumulative preferred stock, of a par value of $100 each, and all were taken by the Finance Corporation. They were assessed at their par value. Fifty thousand shares of common stock of a par value of $10 each were issued, all except the directors' qualifying shares being held in escrow subject to [fol. 33] options of purchase offered in furtherance of the liquidation of the trust company. The shares of the common stock, too, were assessed at their par value.

It is questioned, first, whether the denial of the exemption for the Finance Corporation's stock can be contested for it by the bank, or by anyone other than the Finance Corporation itself, which would in theory suffer the detriment. The tax on the shares under the Maryland statutes is assessed and laid on "the several owners thereof," • • • but may be collected in each case from the bank," with a right of reimbursement from the respective stockholders. Code, Art. 81, Sec. 15 (e). And if the bank in the first instance should be called upon to pay taxes on stock not subject to taxation, and therefore not collectible in turn from the stockholders, the bank would seem to have a grievance of its own, in a violation of the statutes, for which it might properly seek relief in its own name. But it is also the settled practice for a bank or other corporation to litigate a question of taxability on behalf of its stockholders. Des Moines Nat. Bank v. Fairweather, 263 U. S. 103, 111; First Nat. Bank v. Anderson, 269 U. S. 341; First Nat. Bank v. Hartford, 273 U. S. 548; U. S. C. A., Tit. 12, p. 414. There is no ground for objection to the parties; and the proceedings being in due form the question is properly before the court.

In argument of the case it was suggested, but not pressed, that there may be no constitutional power in the Federal Government through such an agency to participate with private stockholders in the ownership and conduct of a national bank. If for that reason the subscription and holding of the preferred stock should be invalid, the fact would require an affirmance of the decision appealed from, because the stock would not then be outstanding and tax-

able. The Finance Corporation would not be a stockholder to be taxed. As the point was not pressed, we proceed upon the assumption that the stock is validly held.

The exemption is not provided by the terms of statutes cited. The provision of the Maryland Code exempting from state taxation any property exempted by the Constitution of the United States or by any Act of Congress, (Code, Art. [fol. 34] 81, Sec. 7, sub-sec. 22), only refers the question to the federal law. The National Banking Act, as last amended by an Act of Congress of March 25, 1926, R. S., Sec. 5219, U. S. C. A., Tit. 12, Sec. 548, is the source of any power to tax the shares of the banks. People v. Weaver, 100 U. S. 539, 543; Davis v. Elmira Bank, 161 U. S. 283. And it authorizes the states to tax "all the shares of national banking associations" located within their jurisdictions, under specified limitations with which this case is not concerned, and makes no exceptions or distinctions among stockholders, governmental or otherwise.

An exemption of the Finance Corporation's shares would be by way of an exception to this general statutory permission to tax shares, either a statutory exception or one grounded on the constitutional principles of governmental immunity.

The only statutory provision in which it is sought is the provision in the Act of Congress creating the Finance Corporation (Act of Jan. 22, 1932; 47 Stat. 5; U. S. C. A., Tit. 15, Sec. 610), that "the corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation • • • except any real property of the corporation shall be subject" to taxation. But this seems to be no more than the exemption applicable to federal agencies generally under the decision in McCulloch vs. Maryland, 4 Wheaton, 316, and although a national bank enjoys the like exemption for its property, it has been held that this does not withdraw from state taxation under section 548 of the Banking Act stock which one national bank may hold in another. Nat. Bank of Redemption v. Boston, 125 U. S. 60; Bank of California v. Richardson, 248 U. S. 476, 483; Bank of California v. Roberts, 248 U. S. 497. We seem not to be permitted then to include the stock held in another corporation within this general exemption of property—unless, indeed, there should be a distinction

made of stock which represents ultimately the investment of public funds only.

Could the exception to the Banking Act provision for state taxation of all shares be established by construing [fol. 35] that provision to refer only to shares which represent investments ultimately of private funds? This is a question suggested by the fact that at the time of the original enactment of the provision the capital of national banks was expected to be derived only from private sources. "The capital of each of the banks in this system was to be furnished entirely by private individuals." Mercantile Bank v. New York, 121 U. S. 138, 154. The general immunity of the government said the court in McCulloch v. Maryland, 4 Wheaton 316, 438, "does not extend to a tax paid by the real property of the Bank of the United States, in common with other real property in a particular state, nor to a tax imposed on the proprietary interest which the citizens may hold in this institution, in common with other property throughout the state." As the statutory permission is not so restricted in terms, and it has long been regarded as retaining for the states the right to tax all such resources of commerce generally, within their jurisdisdictions, we do not feel authorized to read into it now a broad exclusion of all investments of ultimately public money. "The manifest intention of the law is to permit the state in which a national bank is located to tax, subject to the limitations prescribed, all shares of its capital stock without regard to ownership." Nat. Bank of Redemption v. Boston, 125 U. S. 60. "Two provisions in apparent conflict were adopted. First, the absolute exclusion of power in the states to tax the banks, the national agencies created, so as to prevent all interference with their operations, the integrity of their assets, or the administrative governmental control over their affairs. Second, preservation of the taxing power of the several states so as to prevent any impairment thereof from arising from the existence of the national agencies created, to the end that the financial resources engaged in their development might not be withdrawn from the reach of state taxation, but on the contrary that every resource possessed by the banks as national agencies might in substance and effect remain liable to state taxation.

[fol. 35a] "The first aim was attained by the non-recognition of any power whatever in the states to tax the federal

agencies, the banks, except as to real estate specially provided for, and, therefore, the exclusion of all such powers. The second was reached by a recognition of the fact that, considered from the point of view of ultimate and beneficial interest, every available asset possessed or enjoyed by the banks would be owned by their stockholders, and would be, therefore, reached by taxation of the stockholders as such." Bank of California v. Richardson, 248 U. S. 476, 483.

The question argued is whether the immunity of the national government from state taxation does not render immune the shares owned by this particular governmental agency, and so except them from the general taxation of [fol. 36] shares permitted by the Banking Act. It is a question of immunity attaching to a particular stockholder as distinguished from the banking corporation itself. The fact that the bank, too, is a governmental agency, and enjoys immunity for property owned by it, has now no bearing. The immunity to be considered is one which would likewise apply if the shares were those of a state bank or trust company. Exceptions to a general provision may be impressed upon a statute by force of unexpressed general principles. This court has found statutory exemptions extending beyond the letter of statutes, or subject to unexpressed limitations. Anne Arundel v. Annapolis, 126 Md. 445; Havre de Grace v. Bridge Co., 145 Md. 491, 497. And see Van Brocklin v. Tennessee, 117 U. S. 151, 173.

There is no precise test for the existence of an exemption by reason of intergovernmental immunity. It is an immunity of either state or national sovereignty from taxation by the other. "Just what instrumentalities of either a state or a federal government are exempt from taxation by the other cannot be stated in terms of universal application." Metcalf v. Mitchell, 269 U. S. 514, 522. "The exemption of the state's property and its functions from federal taxation is implied from the dual character of our federal system and the necessity of preserving the state in all its efficiency." South Carolina v. United States, 199 U. S. 437, 456. The reason for it "is found in the necessary protection of the independence of the national and state governments within their respective spheres under our constitutional system." Helvering v. Powers, 294 U. S. ——, 79 L. Ed. 141; Fox Film Corp. v. Dougal, 286 U. S. 123, 128; Susquehanna Power Co. v. State Tax Commission, 283

U. S. 291, 294; Flint v. Stone, 220 U. S. 107, 157; McCulloch v. Maryland, 4 Wheaton 316; Van Brocklin v. Tennessee, 117 U. S. 151. The consequent immunity, says the Supreme Court, has inherent limitations. Helvering v. Powers, supra. And it has been decided many times that it does not necessarily attach to property because it is owned by a governmental agency, or even directly by the government, and used in furtherance of a purpose within the government's powers. The immunity is a protection of the function of governing and not all the activities of the sovereignties, state and national, are confined to the performance [fol. 37] of that function.

The Finance Corporation, the owner of the stock in this instance, is an agency of governmental origin, one of which has a close relationship to the national government as its agency for carrying out the broad purpose of upholding the industries of the country during the depression. The United States owns all its stock. The Secretary of the Treasury is a member of the board of directors, the corporation has the mailing privileges possessed by executive and other departments, and commands the aid of departments and government employees generally. Negotiable obligations which it may issue are guaranteed by the United States. It may act as a depositary of public moneys or as a financial agent of the government. It is required to make periodical reports to Congress. Its purpose, and its existence are temporary; it is eventually to be liquidated by its directors, or, if liquidation should be delayed beyond the term of its existence, then by the Secretary of the Treasury. It is obviously a governmental agency of great power and importance. But even so, there may be no immunity from taxation for particular property owned by the agency. A national bank is a governmental agency, the property and franchises of which are for that reason immune from state taxation, yet stock held by one national bank in another is not so exempt. Davis v. Elmira Sav. Bank, 161 U. S. 283; Bank of Redemption v. Boston, 125 U. S. 60; Bank of California v. Richardson, 248 U. S. 476; Bank of California v. Roberts, 248 U. S. 497. So shares held by a national bank in a Federal Reserve Bank may be taxed by a state. Cinn. First Nat. Bank v. Beaman, 257 Fed. 729. And whatever may be the constitutional source of the powers which the Finance Corporation has been formed to exercise, they cannot be distinguished as

governmental in any greater degree than those for which the banks are made use of. McCulloch v. Maryland, 4 Wheat. 316.

The street railway system of the city of Boston was placed by the state of Massachusetts in the hands of a state board of trustees to manage and operate the system for a stated period on behalf of the public, and this was [fol. 38] determined to be a proper exercise of governmental power. Boston v. Treasurer, 237 Mass. 403, 413; Boston v. Jackson, 260 U. S. 309, 314, 316. Yet the salaries of the state's trustees were held subject to the federal income tax. Helvering v. Powers, 294 U. S. —, 79 L. Ed. 141. The state of North Dakota incorporated a bank of its own, the "Bank of North Dakota," for the purpose of encouraging and promoting agriculture, commerce and industry. All the stock was owned by the state, and it was managed by a board of directors composed of the state governor, attorney general and commissioner of agriculture and labor. There was no question of the governmental power in thus extending aid, but the bank was held subject to national taxation. North Dakota v. Olsen, 33 F. (2d) 848. In the cases of South Carolina v. United States, 199 U. S. 437, and Ohio v. Helvering, 292 U. S. 360, state dispensaries for the sale of liquors were held subject to national taxation. In National Home v. Parrish, 229 U. S. 494, it was held that the exemption of the government from payment of interest on claims against it did not extend to an incorporated soldiers' home, though it was under the ultimate supervision of Congress. It had a board of managers of its own and a corps of other officers, made contracts in its own name, and in that name disbursed money supplied by the government for its support and maintenance. Property of the government saved from destruction at sea by salvors is held liable to contribution in general average. The Davis, 10 Wall. 15. And see United States v. Strang, 254 U. S. 491; Salas v. United States, 234 Fed. 842.

Immunity depends upon the nature of the activity in which the government enters its funds or property. "But whether that field of activity in relation to a state carries immunity from federal taxation is a question which compels consideration of the nature of the activity, apart from the mere creation of officers for conducting it, and of the fundamental reason for denying federal authority to tax.

That reason, as we have frequently said, is found in the necessary protection of the independence of the national and state governments within their respective spheres under our constitutional system. The principle of immunity thus has inherent limitations. And one of these [fol. 39] limitations is that the state cannot withdraw sources of revenue from the federal taxing power by engaging in businesses which constitute a departure from usual governmental functions, and to which by reason of their nature the federal taxing power would normally extend. The fact that the state has power to undertake such enterprises, and that they are undertaken for what the state conceives to be the public benefit, does not establish immunity. The necessary protection of the independence of the state government is not deemed to go so far. * * * If in the instant case the Commonwealth had acquired the property of the Company and had organized management of it in perpetuity by the state government instead of temporarily, or had taken over all the street railways in all the cities for direct operation by the Commonwealth, there would be no ground, under the decisions we have cited, for holding that this would effect the withdrawal of the enterprise from the federal taxing power. And the fact that the state has here undertaken public management and operation for a limited time, and under the particular restrictions of the agreement with the company, cannot be said to furnish a ground of immunity." Helvering v. Powers, 294 U. S. —, 79 L. Ed. 141. "While it is evident that in one aspect the extent of the exemption must finally depend upon the functions of the government alleged to be affected by it, still the nature of the governmental agencies or the mode of their constitution may not be regarded in passing on the question of tax exemption; for it is obvious that an agency may be of such a character or so intimately connected with the exercise of a power or the performance of a duty by the one government, that any taxation of it by the other would be such a direct interference with the functions of government itself as to be plainly beyond the taxing power". Metcalf v. Mitchell, 269 U. S. 514, 522, 523.

"Whenever," the Supreme Court has said, "a state engages in a business of a private nature it exercises non-governmental functions and the business, though conducted by the state, is not immune from the exercise of the power

of taxation which the constitution vests in Congress." [fol. 40] Ohio v. Helvering, 292 U. S. 360. "It is, we think, a sound principle that when a government becomes a partner in any trading company, it divests itself so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privilege and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted." Bank of U. S. v. Planters Bank of Georgia, 9 Wheaton, 904, 907. South Carolina v. United States, 199 U. S. 437, 453. It is not that the incorporation of agencies and their engagement in business activities ordinarily occupied by private interests always render the property of the agencies taxable. The contrary is settled by the decisions on privileges and immunities of corporations made use of by the national government in the exercise of its war powers, the Emergency Fleet Corporation, the Spruce Production Corporation, and the United States Housing Corporation. Clallam v. United States, 263 U. S. 341; Olson v. U. S. Spruce Corporation, 267 U. S. 462; Emergency Fleet Corporation v. Western Union 275 U. S. 415; New Brunswick v. United States, 276 U. S. 547; Merchants Fleet Corporation v. Harwood, 281 U. S. 519.

The relation to the functions of government, and the scope of the part to be played by the agency in the field into which it has been entered may make the difference between immunity for one agency and none for the other.

Congress, acting for the national government has the power to enter a field of private activity for its constitutional purposes to such an extent, great or small, and in such manner, as it finds appropriate; and normal incidents may sometimes be assumed for what it does undertake. In deciding that interest was recoverable on the amount of government insurance of freight advances against war risks, the Supreme Court said, "When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business." Standard Oil Co. v. United States, 267 U. S. 76, 79. And [fol. 41] as has been seen, property of the government saved from destruction at sea by salvors is held liable to

contribution in general average. The Davis, 10 Wall 15. And see National Home v. Parrish, 229 U. S. 494, and Federal Land Bank v. Priddy, 294 U. S. —, 79 L. Ed. 709.

For extending the aid to industries determined upon for the period of the depression, the national government, assuming all necessary constitutional powers, could as pointed out in argument have used ordinary departmental executives or officers, without creating a corporation for the work. And the aid might have been extended by gifts or loans. Loans might have been secured by pledges of stock or other property. Always the government would have stood apart, not participating in the business. But a corporation was decided upon as an agency. And instead of making direct gifts, or loans, it was authorized (U. S. C. A., Tit. 12, Sec. 51D) to subscribe to preferred stock in corporations aided, at least when under state laws such stock could be taken free of double liability. The preferred stock is taken with the incidental right to profits, and actual conduct of the business may be taken over. To a greater or less extent the Finance Corporation has been placed in the position of partner in the business aided, whatever that business may be. U. S. C. A., Tit. 12, Secs. 601, 605, 609, etc.; Cont. Ill. Nat. Bank v. Chicago, R. I. & Pac. Co., 294 U. S. —, 79 L. Ed. 642; Bassett v. Merchants Trust Co., 115 Conn. 530, 538.

There is some difference in methods of payment of taxes on shares of stock under statutes like those in Maryland. Perhaps in the greater number of instances the corporations pay the taxes as they pay any other corporate obligations. The appellant here quotes a report of counsel for the Finance Corporation that the officers had been led to believe that as a general rule banks pay the taxes and make no attempt to seek reimbursement. So far as that method is adopted the tax is practically indistinguishable from a tax on the corporation itself, and the stockholders, Finance Corporation or others, are not directly concerned in it. Exempting some of the shares would mean not relieving the owners from collections or deductions of taxes [fol. 42] but favoring the corporation by relieving it in part from the common burden of the business, and of giving it an advantage in competition.

We have been unable to see that taxing these shares as usual may, because of the nature and constitution of the agency owning them interfere with the governing func-

tion of the national sovereignty, or carry any possibility of interference. On the contrary, it seems to us that the particular agency is, in the words of the Supreme Court, "engaging in a business which constitutes a departure from usual governmental functions." Helvering v. Powers, 294 U. S. 79 L. Ed. 141. After considering the circumstances recited, the activity in which the Finance Corporation is entered by taking the preferred stock, the extent to which it is entered, and the relation to the business of the community, we conclude that no special immunity belongs to this holding of stock such as to require that the stock shall be excepted from the general provision for state taxation.

Our conclusion is contrary to that of two other courts, but we feel constrained to accept that conclusion, with all respect for the opposite one, and set it down with the considerations which have seemed to lead to it.

The decision of the State Tax Commission will be reinstated.

Order reversed with costs.

[File endorsement omitted.]

[fol. 43] IN COURT OF APPEALS OF MARYLAND

April Term, 1935

No. 39

STATE TAX COMMISSION OF MARYLAND

vs.

BALTIMORE NATIONAL BANK

JUDGMENT—Filed July 24, 1935

The appeal in the above entitled case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon on this 17th day of July, 1935, by the Court of Appeals of Maryland, and by the authority thereof, adjudged and ordered that the order dated the 22nd

day of January, 1935, of the Circuit Court of Baltimore City, be and the same is hereby reversed with costs.

Carroll T. Bond, Hammond Urner, T. Scott Offutt, F. Neal Parke, D. Lindley Sloan, Walter J. Mitchell, Wm. Mason Shehan, Benj. A. Johnson.

[File endorsement omitted.]

[fol. 44] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

PETITION FOR APPEAL—Filed July 25, 1935

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland:

The petition of Baltimore National Bank, appellee in this Court, and petitioner and appellant in the Circuit Court of Baltimore City, from a decision and order of the State Tax Commission of Maryland in the matter of the assessment for taxation of the preferred stock of said Baltimore National Bank, respectfully shows:

1. That as fully appears from the record in this cause, this cause is and was in the Circuit Court of Baltimore City, in which city the principal office of your petitioner is located, and was and is in the Court of Appeals of Maryland, a suit wherein was drawn in question, the validity of a certain statute of the United States, namely, the Reconstruction Finance Corporation Act as amended (Act of January 22, 1932; 47 Stat. 5; Title 15, U. S. C. A., Section 601; and in particular Section 610 thereof), and that the effect of the final decree and judgment of the Court of Appeals of Maryland was and is a decision against the validity of said statute; and wherein there was also drawn in question the validity of certain statutes of the State of Mary-[fol. 45] land, namely, the statutes relating to "Revenue and Taxes" (Article 81 of the Annotated Code of Maryland, 1929 Supplement, and more particularly Sections 6 (6), 10 and 15 thereof), and certain orders of the State Tax Commission of Maryland purporting to have been

made in pursuance of said statutes, on the ground that said statutes, including said decision and orders, were and are in violation of and repugnant to the Constitution of the United States and certain statutes of the United States, namely, the National Banking as last amended by Act of Congress of March 25, 1926 (R. S., Sec. 5219; Title 12, U. S. C. A., Sec. 548), and said Reconstruction Finance Corporation Act, and the final decree and judgment of the Court of Appeals of Maryland, made on the 17th day of July, 1935, and entered in said cause on the 24th day of July, 1935, was and is a decision in favor of the validity of said statutes of the State of Maryland, including said orders purporting to have been made pursuant to the authority thereof.

2. That the opinion of the Court of Appeals of Maryland was dated June 18, 1935, and that the decree and judgment herein of the Court of Appeals of Maryland sought to be received was made on the 17th day of July, 1935, and was entered in said cause on the 24th day of July, 1935, and was and is a final decision of the highest Court of the State of Maryland.

3. Your petitioner, for the reasons specified in the Assignment of Errors, which is filed herewith, conceives itself aggrieved by said final decree and judgment made by the Court of Appeals of Maryland on the 17th day of July, 1935, and entered the 24th day of July, 1935.

Wherefore, your petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to [fol. 46] the Supreme Court of the United States, and that an order may be passed fixing the amount of the bond on said appeal, and that thereafter the decree and judgment of the Court of Appeals of Maryland herein, made and entered as aforesaid, may be reversed and that the appellant may have such other and further relief as the Supreme Court of the United States may deem proper in the premises.

Semmes, Bowen & Semmes, Edwin F. A. Morgan,
Gaylord Lee Clark, Solicitors for Appellant.

[File endorsement omitted.]

[fol. 47] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 25, 1935

Upon consideration of the petition for appeal, the assignment of errors and the statement of jurisdiction herein presented this 25th day of July, 1935, it is now hereby

Ordered, this 25th day of July, 1935, that an appeal in the above entitled cause, from the Court of Appeals of Maryland to the Supreme Court of the United States, be and hereby is allowed as prayed, upon the filing of a bond in the sum of three hundred dollars ($300), with good and sufficient security.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

[File endorsement omitted.]

[fol. 48] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 25, 1935

And now comes Baltimore National Bank, a national bank duly incorporated and existing under the laws of the United States, appellee in the above entitled cause in the Court of Appeals of Maryland, and petitioner and appellant in the Circuit Court of Baltimore City, and for its Assignment of Errors says:

I. That the Court of Appeals of Maryland erred in not affirming the judgment of the Circuit Court of Baltimore City dated the 22nd day of January, 1935, reversing the order of the State Tax Commission of Maryland dated the 17th day of December, 1934, assessing for taxation the preferred capital stock of said Baltimore National Bank, because the owner of all of said preferred capital stock is Reconstruction Finance Corporation, an arm or department of the Government of the United States of America, and Section 10 of the Reconstruction Finance Corporation

Act as amended (Act of January 22, 1932; 47 Stat. 5; Title 15, U. S. C. A., Section 601 et seq.) specifically provides that the Reconstruction Finance Corporation, including its franchise, capital, reserves and surplus, and its income shall be exempt from all taxation, and accordingly none of such preferred capital stock is subject to assessment for taxation by the State of Maryland or any politi- [fol. 49] cal sub-division thereof, since to so assess or tax any of said shares of preferred capital stock would be in violation of and repugnant to the provisions of the Reconstruction Finance Corporation Act as amended, and particularly to the provisions of Section 10 thereof.

II. That the Court of Appeals of Maryland erred in not affirming the judgment of the Circuit Court of Baltimore City dated the 22nd day of January, 1935, reversing the order of the State Tax Commission of Maryland dated the 17th day of December, 1934, assessing for taxation the preferred capital stock of said Baltimore National Bank, because the owner of all of said preferred capital stock is Reconstruction Finance Corporation, an arm or department of the Government of the United States of America, and accordingly none of said preferred capital stock is subject to assessment for taxation by the State of Maryland or any political sub-division thereof, by reason of the restrictions implied in the Constitution of the United States as decided in the case of McCulloch vs. Maryland, 4 Wheat. 316, and succeeding cases, prohibiting the taxation by a State of property of the Federal Government.

III. That the Court of Appeals of Maryland erred in not affirming the judgment of the Circuit Court of Baltimore City dated the 22nd day of January, 1935, reversing the order of the State Tax Commission of Maryland dated the 17th day of December, 1934, assessing for taxation the preferred capital stock of said Baltimore National Bank, because the owner of all of said preferred capital stock is Reconstruction Finance Corporation, an arm or department of the Government of the United States of America, and although the National Banking Act as last amended by an Act of Congress of March 25, 1926 (R. S. Section 5219; Title 12, U. S. C. A., Section 548) permits taxation by a State of shares of the capital stock of national banks [fol. 50] in strict conformity with said National Banking

Act, said Act does not permit or authorize the taxation of shares of stock of national banks in cases where the owner of such shares is the United States of America or an arm or department of the Government of the United States of America, and accordingly none of said shares of the preferred capital stock of Baltimore National Bank are subject to assessment for taxation by the State of Maryland or any political sub-division thereof, since to so assess or tax any of said shares of preferred capital stock would be in violation of and repugnant to the provisions of the National Banking Act as amended.

IV. That the Court of Appeals of Maryland erred in not affirming the judgment of the Circuit Court of Baltimore City dated the 22nd day of January, 1935, reversing the order of the State Tax Commission of Maryland dated the 17th day of December, 1934, assessing for taxation the preferred capital stock of said Baltimore National Bank, because the owner of all of said preferred capital stock is Reconstruction Finance Corporation, an arm or department of the Government of the United States of America, and such preferred capital stock is not subject to assessment for taxation by the State of Maryland or any political sub-division thereof, and Sections 6 (6), 10 and 15 of Article 81 of the Annotated Code of Maryland, 1929 Supplement, and the order of the State Tax Commission of Maryland, purporting to have been made in pursuance of said statute, and the judgment of the Court of Appeals of Maryland thereon, permitting the assessment for the purposes of taxation by the State Tax Commission of Maryland, in accordance with the provisions of Sections 6 (6), 10 and 15 of said Article 81, of the preferred capital stock of Baltimore National Bank, despite the fact that Reconstruction Finance Corporation, an arm or department of the Government of the United States of America, is the owner of all of said preferred capital stock, are in [fol. 51] violation of and repugnant to the Reconstruction Finance Corporation Act and in particular Section 10 thereof, the Constitution of the United States, and the National Banking Act.

Wherefore, Baltimore National Bank prays that the decree and judgment herein of the Court of Appeals of Maryland made the 17th day of July, 1935, and entered on the 24th day of July, 1935, be reversed and that said Court

be directed to enter a judgment in favor of said Baltimore National Bank.

Semmes, Bowen & Semmes, Edwin F. A. Morgan, Gaylord Lee Clark, Solicitors for Appellant, Baltimore National Bank.

[File endorsement omitted.]

[fols. 52 & 53] Bond on appeal for $300.00 approved and filed July 25, 1935, omitted in printing.

[fol. 54] Citation in usual form, showing service on Wm. L. Henderson, filed July 25, 1935, omitted in printing.

[fol. 55] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed July 25, 1935

To the Clerk of the above Court:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, to wit:

1. The Record in this cause, being Record No. 39 of the April Term, 1935, of the Court of Appeals of Maryland, filed March 30, 1935.
2. Final Order and Opinion of Court of Appeals of Maryland filed 18th of June, 1935.
3. Petition for appeal to the Supreme Court of the United States and order of Chief Judge of the Court of Appeals of Maryland, allowing said appeal, filed the 25th of July, 1935.
4. Assignment of Errors thereon and Prayer for Reversal filed the 25th of July, 1935.
5. Statement as to jurisdiction of Supreme Court of United States, filed the 25th of July, 1935.

6. Copy of Appellant's bond and approval thereof by said Chief Judge, filed the 25th of July, 1935.

7. Citation to Appellee issued the 25th of July, 1935, together with Proof of Service.

[fol. 56] 8. This Præcipe and service thereon.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States at Washington, D. C. on or before the 2nd day of September, 1935.

Dated the 25th of July, 1935.

Semmes, Bowen & Semmes, Edwin F. A. Morgan, Gaylord Lee Clark, Solicitors for Appellant.

Service of above Præcipe accepted and acknowledged this 25th day of July, 1935.

Herbert R. O'Conor, Atty. Gen.; Wm. L. Henderson, Asst. Atty. Gen., Solicitors for Appellee.

[File endorsement omitted.]

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 58] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND PARTS OF RECORD NECESSARY FOR CONSIDERATION—Filed July 30, 1935

Now comes Baltimore National Bank, appellant in the above entitled cause, and for a statement of the points on which it intends to reply it adopts its Assignment of Errors and states that the whole of the record as certified and filed, is necessary for the consideration of this case.

Edwin F. A. Morgan, Counsel for Appellant.

Service of copy admitted this 29th day of July, 1935.

Herbert R. O'Conor, Attorney General; Wm. L. Henderson, Assistant Attorney General, Counsel for Appellee.

[fol. 59] [File endorsement omitted.]

[fol. 60] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

Appeal from the Court of Appeals of the State of Maryland

Treating the appeal papers herein from the Court of Appeals of the State of Maryland as an application for a writ of certiorari,

On consideration whereof, it is ordered by this Court that the said application for writ of certiorari be, and the same is hereby granted.

Endorsed on cover: File No. 39,837. Maryland, Court of Appeals. Term No. 283. Baltimore National Bank, Appellant, vs. State Tax Commission of Maryland. Filed July 26, 1935. Term No. 283, O. T. 1935.